

## CHAPTER 8

### LEGAL

A. GENERAL. In conducting **MSCA**, DoD Components must comply with applicable legal requirements. These requirements are outlined in Federal statutes, Executive orders, regulations promulgated by other Federal Agencies, a DoD Directive, and a memorandum of agreement with other Federal Agencies and relief organizations. Before committing DoD resources, the servicing judge advocate must determine what legal authority forms the basis for the **MSCA**. In most situations, **MSCA** is preceded by a request from competent civil authority (usually FEMA) for support that the civil authorities cannot provide. In rare instances where prior communication with higher headquarters is not possible, local commanders are authorized to provide **MSCA** to save lives, prevent human suffering, or mitigate large property damage when imminently serious conditions result from either a civil emergency or attack. Note that military operations will always have precedence over **MSCA**, unless otherwise directed by the Secretary of Defense.

B. SCOPE. DoD Directive 3025.1 (reference (c)), authorizes the publication of this Manual. This Directive consolidates all policy and responsibilities previously known as "Military Assistance to Civil Authorities (**MACA**)," **applicable to disaster-related civil emergencies within the United States, its territories, and possessions, with those related to attacks on the United States, previously known as "Military Support to Civil Defense (**MSCD**).**" It does not apply to:

1. Foreign disaster relief. See DoD Directive 5100.46 (reference (e)).

2. Military support to civil law enforcement. See DoD Directive 5525.5 (reference (o)).

3. Military support for civil disturbances (**MACDIS**). See DoD Directive 3025.12 (reference (b)).

C. FEDERAL EMERGENCY MANAGEMENT AGENCY. The FEMA is the lead Federal Agency for civil emergency and civil defense preparation, planning, and operations. All requests for **MSCA** should be channeled from the appropriate civil authority through **FEMA**. FEMA has authority to task DoD Components to perform **MSCA**.

D. COSTS ASSOCIATED WITH **MSCA**. Generally, **MSCA** is performed on a cost-reimbursable basis, and the incremental costs of **MSCA** directed by FEMA are **reimbursable**. For this reason, whenever possible all requests from civil authorities for **MSCA** should be

routed through FEMA for review and authorization before providing the requested support. Whenever MSCA is provided without direct authorization or tasking by FEMA, approval from FEMA must be sought as soon as possible.

E. LEGAL AUTHORITIES. The legal bases for the provision of MSCA range from statutory authority to a memorandum of agreement between Federal Agencies. This list of authorities is not exhaustive and is subject to constant change and revision. This Manual merely provides guidance and **should** not be relied upon as source authority. Because the Manual applies to DoD activities, implementing Service regulations are not listed.

1. Statutes

a. 42 U.S.C 5121, et sea. as amended (reference (f))  
This Act, also known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the Stafford Act, provides for an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters. Upon the request of the affected governor, the President may declare an "emergency" (42 U.S.C. 5191) or "major disaster" (42 U.S.C. 5170) (references (ttt) and (uuu)), thereby permitting mobilization of Federal assistance under the Act. In addition, upon the request of the affected governor, the Act authorizes the President to order the Department of Defense to provide "emergency work" under 42 U.S.C. 5170b(c) (reference (vvv)) (a maximum of 10 days in duration) before declaring either an emergency or major disaster. The Act provides for the designation of a FCO (42 U.S.C. 5143) (reference (www)), who coordinates the administration of all relief efforts by Federal Agencies.

b. 50 U.S.C. APP 2251 et seq., as amended (reference (a)). This Act, also known as the Federal Civil Defense Act of 1950, is a compilation of statutory provisions that affect civil defense planning and operations. These provisions provide the complete text of all Executive orders assigning civil defense functions to Federal Agencies.

c. 31 U.S.C. 1535 (reference (kk)). This Act, frequently referred to as the Economy Act, authorizes Federal Agencies to provide supplies, equipment, and material on a reimbursable basis to other Federal Agencies.

d. 16 U.S.C. 2106 (reference (xxx)). This Act, known as the Cooperative Forestry Assistance Act of 1978, authorizes the Secretary of Agriculture to assist in the prevention and control of rural fires through coordination with FEMA and to provide prompt and adequate assistance whenever a rural fire emergency overwhelms, or threatens to overwhelm, the fire fighting

capabilities of the affected state or rural area. In turn, the Department of Defense is a supporting agency under ESF 4 (Fire fighting) of the FRP. Subject to appropriate requests from the Secretary of the Agriculture, FEMA tasks the Department of Defense to provide support to fire fighting efforts.

e. 42 U.S.C 9601 et seq. (reference (t)). More popularly known as "Superfund," the Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA was passed to provide the needed general authority for Federal and State governments to respond directly to hazardous substance incidents. It creates the National Contingency Plan (42 U.S.C. 9605, reference (u) ) for the removal of oil and hazardous substances.

f. 47 U.S.C 309 (reference (yyy)). This Act, also referred to as the Communications Act of 1934, gives the Federal Communications Commission authority to grant Special Temporary Authority on an expedited basis to operate radio frequency devices. It serves as the basis for obtaining a temporary permit to establish a DoD radio station and broadcast public service announcements during the immediate aftermath of an emergency or major disaster.

g. 10 U.S.C 672(b) (reference (kkk)). This provision authorizes the Secretary concerned to order RC personnel (Army Reserve & Army and/or Air National Guard of the United States) to active duty for a period of no more than 15 days per year. Ordinarily, this authority is used to conduct annual training (USAR) or annual training outside the U.S. or its territories (ARNGUS). If this authority has been used during the current fiscal year, it is no longer available.

h. 10 U.S.C. 672(d) (reference (fff)). This provision permits the Secretary concerned to order to active duty RC volunteers. The respective governor must consent to the activation of National Guard personnel.

i. 10 U.S.C. 673b(b) (reference (qqq)). Units or members of units of the Selected Reserve ordered to active duty to augment the active forces for an operational mission, may not provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

j. 10 U.S.C 3500, 8500 (references (pp) and (qq)). These provisions permit the President to call National Guard and Air National Guard to active service to defend the United States against attacks, to quell rebellion, or when State authorities are unable to execute the laws.

k. 18 U.S.C 1385 (reference (222)). This Act, sometimes called the Posse Comitatus Act, proscribes criminal penalties for

the use of the Army or Air Force to perform civilian law enforcement within the United States, unless otherwise authorized by law. (The Navy and Marine Corps are included in this prohibition by DoD policy; see DoD Directive 5525.5, enclosure 4, section C (Reference (o)).)

1. 28 U.S.C 2671, et. sea. (reference (aaaa)). These provisions, known as the Federal Tort Claims Act, provide substantive and procedural requirements for filing claims against the United States for negligent acts or omissions of employees, including DoD personnel.

m. Other Recommended Statutes

10 U.S.C. Chapter 15, Insurrection  
10 U.S.C. 9441, Civil Air Patrol  
10 U.S.C. 2300, et seq, Contracting  
18 U.S.C. 592, Prohibition of Federal Troops  
at Polling Places  
18 U.S.C. 3056 note, The Presidential Protection  
Assistance Act of 1978  
33 U.S.C. 701n(a), Flood Control Act  
33 U.S.C. 1251-1386, Clean Water Act  
Pub. L. No. 101-165 (1989), Defense Emergency  
Response Fund

2. Executive Orders

a. Executive Order 12148 (reference (g)). This order establishes the FEMA and delegates most of the President's authority under the Stafford Act (reference (f) ) to FEMA.

b. Executive Order 12656 (reference (l) ). This order assigns "lead responsibilities" and "support responsibilities" to each of the Federal Agencies responsible for NSEP. It also establishes FEMA as the coordinating agency for all other Federal Agencies.

3. Code of Federal Regulations

a. 44 CFR 206 (reference (h)). These implementing regulations were promulgated by FEMA to execute the Stafford Act (reference (f)).

b. 40 CFR 300 (reference (u)). This regulation, referred to as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. The responsibilities of FEMA and the Department of Defense are listed at Part 300.175.

c. Other Recommended Federal Regulations

5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch.

Federal Acquisition Regulation (FAR)

Defense Acquisition Supplement (DARS)

Army Acquisition Regulation Supplement (AAR)

AMC Acquisition Regulation (AMC AR)

4. Department of Defense Directives

a. DoD Directive 3025.1 (reference (c)). This Directive outlines DoD policy on assistance to the civilian sector during disasters and other emergencies. Use of DoD military resources in civil emergency relief operations will be limited to those **resources** not immediately required for the execution of the primary defense mission. Normally, DoD resources will be committed as a supplement to **non-DoD** resources that are required to cope with the humanitarian and property protection requirement **caused by the emergency**. **Imminently serious conditions resulting** from any civil emergency may require immediate action by commanders or by responsible officials of other DoD Agencies to save lives, prevent human suffering, or mitigate great property damage upon:

(1) Direction by the president to perform emergency work under 42 U.S.C. 5170b(c) (reference (vvv));

(2) A Presidential declaration of an emergency under 42 U.S.C. 5191 (reference (ttt)); or

(3) A Presidential declaration of a major disaster under 42 U.S.C. 5170 (reference (uuu)), the Director of Military Support, Department of the Army, acts for the Secretary of the Army as the DoD Executive agent for emergency relief operations. Military personnel in Federal service under 10 U.S.C. (reference (iii)), United States Code, will be under the command of and directly responsible to their military superiors and will not be used to enforce or execute civil law in violation of the Posse Comitatus Act (18 U.S.C. 1385, reference (zzz)). Military resources will not be procured, stockpiled, or developed solely to provide assistance to civil authorities during emergencies.

b. Other Recommended Department of Defense Directives and Instructions

See references (x), (mm), (w), and (bbbb) through (1111) .

5. The Federal Response Plan, April 1992 (reference (q)). It assigns primary responsibility for each Emergency Support Function (ESF) to a particular Federal Agency. The Department of

Defense has primary responsibility for ESF 3 (Public Works and Engineering -- US Army Corps of Engineers). The Department of Defense is a supporting agency for all other ESFs. Under the FRP, FEMA tasks all disaster relief efforts by ESF.